IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

CRP.No. 879 of 2007()

AGAINST THE ORDER DATED 27/06/2007 IN EP 364/2006 IN OS.431/2003 of MUNSIFF COURT, HOSDRUG
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REVN. PETITIONER: JUDGEMENT DEBTOR/DEFENDANT

K.ABDUL RAHIMAN AGED 33 YEARS,
S/O. HASSAINAR,STAR TRADERS, NEAR ARIMAL CLINIC,
KOTTACHERY, BALLA VILLAGE, KASARGODE DISTRICT.

BY ADV. SRI.A.F.SEBASTIAN

RESPONDENTS: DECREE HOLDER/2 & 3 JUDGMENT DEBTORS
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1. NORTH MALABAR GRAMIN BANK,MADIYAN,
AJNUR VILLAGE, HOSDURG TALUK,P.O. MANIKOTH,
KASARGODE DISTRICT,(REP BY ITS MANAGER)

2. C.MAJEED, 35 YEARS, S/O.ABDUL RAHIMAN
CHERAKADATH HOUSE, ATHINHAL, AJNUR VILLAGE
KASARGODE DISTRICT.

3. K.ALIYAR, AGED 52 YEARS,
S/O. ABDUL RAHMAN,NAZEETH MANZIL, KEEKAN VILLAGE,
KASARGODE DISTRICT.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 879 OF 2007

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Dated this the 5th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Hosdurg in E.P.364/06. The decree holder is the North Malabar Gramin Bank. The revision petitioner had taken a loan for the purpose of conducting his business, i.e. Judgment debtor No.1. PW1 deposed that he is still conducting the business, he is owning property worth about Rs.10 lakhs and therefore he has got the means to pay and he is willfully avoiding or neglecting to pay the amount. He has produced Exts.A1 and A2. Ext.A1 would show that the first judgment debtor is paying tax for the building and Ext.A2 is the licence in the name of judgment debtor No.1 for grocery business. But the Court found that the person is not conducting the grocery business now. But the Court relied upon the factum that the judgment debtor No.1 is having a building which is worth about 10 lakhs which is an asset that can be made use of for raising the funds or discharging the liability. This point has been considered by this Court in the

decision reported in ***Kuppuswamy v. P.G. Menon (1992 (2) KLT 203)***. It is stated therein that if there is a prima facie material on record about the means of the judgment debtor it is for the judgment debtor to rebut it. He is in a better position to know of his assets. The crucial words in clause (b) of the proviso to Section 51 CPC, "the means to pay the amount of the decree or substantial part thereof" only mean that the judgment debtor should have realisable assets from which the necessary money can be raised or realised to pay up to the decree amount. Here, there is prima facie evidence to show that he is owning a building. No counter evidence is adduced. He had not mounted the box. There are prima facie materials which will satisfy the conscience of the Court regarding the means. Therefore, I do not find any merit in the CRP regarding the finding on means and therefore it is dismissed. At the same time I do not want to send the judgment debtor to jail immediately if he is really earnest to make the payments in instalments. Therefore, I direct him to pay the balance amount in three monthly equal

instalments and the first instalment is to commence from 6.11.07. If there is default of any of the instalments, the decree holder can request the Court for execution of the warrant of arrest and detain him in civil prison. In order to facilitate the civil revision petitioner to make the payment, the Court is directed not to send him to civil prison for the period mentioned above.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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